

1 TOM MONTGOMERY, WSBA NO. 19998  
2 KELSEY ENDRES, WSBA NO. 39409  
3 MONTGOMERY SCARP MACDOUGALL, PLLC  
1218 3<sup>rd</sup> Ave., Ste. 2700  
Seattle, WA 98101  
4 Attorneys for Defendant BNSF RAILWAY COMPANY

**The Honorable J. Kelley Arnold**

5 FREDRIC BREMSETH  
Bremseth Law Firm, P.C.  
6 601 Carlson Parkway, Suite 995  
7 Minnetonka, Minnesota 55305  
Attorney for Plaintiff RICHARD NELSON  
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11 **UNITED STATES DISTRICT COURT**  
12 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

13 RICHARD NELSON )

14 Plaintiff, )

15 vs. )

16 BNSF RAILWAY COMPANY, a Delaware )  
Corporation, )

17 Defendant. )

**Case No. 08-5276JKA**

**STIPULATION AND ORDER TO  
ADJUST DEADLINES**

**NOTE ON MOTION CALENDAR:  
February 2, 2009**

18 )  
19 )  
20 Plaintiff Richard Nelson and defendant BNSF Railway Company respectfully stipulate  
21 and request this Court enter an Order adjusting the deadlines for expert disclosures, discovery  
22 cutoff, and deadline to file dispositive motions as specified below.

23 **BACKGROUND**

24  
25 The Court has ordered completion of discovery in this case by March 8, 2009. *See* Dkt.  
26 15 (*Scheduling Order*, dated September 17, 2008) (“*Scheduling Order*”). That March 8<sup>th</sup>  
27 discovery deadline falls approximately one month before the parties’ expert disclosures are due

28 **STIPULATION AND  
ORDER TO ADJUST DEADLINES - 1**

**Montgomery Scarp MacDougall, PLLC**  
1218 Third Avenue, Suite 2700  
Seattle, WA 98101  
TEL: 206-625-1801

(April 7, 2009) and two months before the parties' expert rebuttal disclosures are due (May 7, 2009). Similarly, the deadline to file dispositive motions falls on the same date primary expert reports are due (April 7, 2009), and approximately 30 days *before* rebuttal expert disclosures are due. To "secure the just, speedy, and inexpensive determination" of this case as required by Fed. R. Civ. Pro. 1, Nelson and BNSF stipulate and respectfully request that the deadlines for disclosure of expert and rebuttal witnesses, discovery cutoff, and filing dispositive motions be adjusted as follows:

<b>Event</b>	<b>Current schedule</b>	<b>Proposed schedule</b>
Disclosure of Expert Witnesses	<b>April 7, 2009</b> (per CR 26(a)(2)) (90 days before trial)	<b>March 10, 2009</b> (118 days before trial)
Disclosure of Rebuttal Witnesses	<b>May 7, 2009</b> (per CR 26(a)(2)) (60 days before trial)	<b>March 31, 2009</b> (97 days before trial)
Discovery Cut-off	<b>March 8, 2009</b> (120 days before trial)	<b>April 30, 2009</b> (67 days before trial)
Last Date to File Dispositive Motions	<b>April 7, 2009</b> (90 days before trial)	<b>May 7, 2009</b> (60 days before trial)
Trial	<b>July 6, 2009</b>	<b>July 6, 2009</b>

### **ARGUMENT**

The Federal Rules of Civil Procedure require a party to make its expert disclosure(s) "at the times and in the sequence that the court orders." Fed.R.Civ.Pro. 26(a)(2)(C). The Western District's Local Civil Rules provide that although 120 days before trial is the typical baseline for discovery cutoff, the court may adjust that date. *See* CR 16(f). Similarly, 90 days before trial is the standard deadline to file dispositive motions "unless otherwise ordered by the court." CR 16(g). A party may request that the court adjust scheduling deadlines pursuant to Fed.R.Civ.Pro. 6(b), which states that "the court may, for good cause, extend the time" if "a request is made, before the original time . . . expires. . . ."

1 Both parties believe good cause exists to schedule the expert disclosures prior to the  
2 discovery cutoff and last date to file dispositive motions. First, it would be unfairly prejudicial to  
3 force either party to depose the other party's expert(s) before the deponent produces his or her  
4 expert report. For all intents and purposes, the deponent could simply refuse to analyze the  
5 information or render an opinion until after the discovery deadline passes. As a result, the parties  
6 will not have an opportunity to meaningfully depose their respective experts prior to trial.  
7 Second, the parties will not be able to file dispositive motions based on those expert disclosures.  
8 Finally, the parties would be potentially required to offer premature or incomplete opinions or  
9 responses during the course of regularly-conducted discovery.  
10

11 For those reasons, BNSF and Nelson respectfully request the court adjust the Scheduling  
12 Order: Disclosure of Expert Witnesses on March 10, 2009; Disclosure of Rebuttal Witnesses on  
13 March 31, 2009; Date for Completion of Discovery on April 30, 2009; and Last Date to File  
14 Dispositive Motions on May 7, 2009.  
15

16 DATED this 2<sup>nd</sup> day of February, 2009.

17 By /s/ Kelsey Endres  
18 Tom Montgomery, WSBA No. 19998  
19 Kelsey Endres, WSBA No. 39409  
1218 Third Ave., Ste. 2700  
Seattle, WA 08101  
20 Telephone: (206) 625-1801  
21 Facsimile: (206) 625-1807  
Attorneys for Defendant BNSF RAILWAY COMPANY

22 -and-

23 By /s/ Fredric Bremseth  
24 FREDRIC BREMSETH  
25 Bremseth Law Firm, P.C.  
601 Carlson Parkway, Suite 995  
26 Minnetonka, Minnesota 55305  
Attorney for Plaintiff RICHARD NELSON  
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1 **ORDER**

2 IT IS SO ORDERED.

3 DATED this 3<sup>rd</sup> day of February, 2009.

4  
5 /s/ J. Kelley Arnold  
6 Honorable J. Kelley Arnold  
7 United States Magistrate Judge  
8

9 Presented by:

10 By /s/ Kelsey Endres  
11 Tom Montgomery, WSBA No. 19998  
12 Kelsey Endres, WSBA No. 39409  
13 1218 Third Ave., Ste. 2700  
14 Seattle, WA 08101  
15 Telephone: (206) 625-1801  
16 Facsimile: (206) 625-1807  
17 Attorneys for Defendant BNSF RAILWAY COMPANY

18 -and-

19 By /s/ Fredric Bremseth  
20 FREDRIC BREMSETH  
21 Bremseth Law Firm, P.C.  
22 601 Carlson Parkway, Suite 995  
23 Minnetonka, Minnesota 55305  
24 Attorney for Plaintiff RICHARD NELSON  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of February, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Fredric Bremseth  
Bremseth Law Firm, P.C.  
601 Carlson Parkway, Suite 995  
Minnetonka, Minnesota 55305

MONTGOMERY SCARP MACDOUGALL, PLLC

s/Kristen Bromenshenkel  
Kristen Bromenshenkel